

**Action Plan
on addressing the Risks
identified in the
Terrorism Financing
Risk Assessment
and
National CFT Strategy**

National Coordinating Committee on Combating
Money Laundering and Funding of Terrorism

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Acronyms used in this assessment

| | |
|--------------|---|
| AML | Anti-Money Laundering |
| AMLU | Anti-Money Laundering Unit of the Malta Police Force |
| ARB | Asset Recovery Bureau |
| AGO | Office of the Attorney General |
| BO | Beneficial Owner |
| CBM | Central Bank of Malta |
| OCVO | Office of the Commissioner for Voluntary Organisations |
| CPI | Transparency International Corruption Perception Index |
| CFT | Combating the Financing of Terrorism |
| CFP | Combating the Financing of Proliferation |
| EU | European Union |
| FATF | Financial Action Task Force |
| FI | Financial Institution |
| FIAU | Financial Intelligence Analysis Unit |
| FIU | Financial Intelligence Unit |
| FT | Financing of Terrorism |
| GDP | Gross Domestic Product |
| IIP | Malta Individual Investor Programme |
| MBR | Malta Business Registry |
| MFSA | Malta Financial Services Authority |
| MGA | Malta Gaming Authority |
| MIIPA | Malta Individual Investor Programme Agency |
| MSS | Malta Security Service |
| ML | Money Laundering |
| MSB | Money Service Business |
| MLA | Mutual Legal Assistance |
| NCC | National Coordinating Committee on Combating Money Laundering and Terrorism Financing |
| NRA | National Risk Assessment |
| OECD | Organisation for Economic Co-operation and Development |
| PF | Proliferation Financing |
| RBA | Risk Based Approach |
| SMB | Sanctions Monitoring Board |
| STR | Suspicious Transaction Report |
| VFA | Virtual Financial Asset |
| VO | Voluntary Organisation |

1. Introduction

The Financial Action Task Force (FATF)¹ requires each country to identify, assess and understand the terrorist financing risks it faces in order to mitigate them and effectively dismantle and disrupt terrorist networks. FATF recommendation 1 lays out a number of basic principles with regards to FT risk. It calls on jurisdictions to “identify, assess and understand” the FT risks they face, including by designating “an authority or mechanism to coordinate actions to assess risk.” On the basis of this assessment, jurisdictions should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate FT are commensurate with the risks identified.

To this end, the National Coordinating Committee on Combating Money Laundering and Funding of Terrorism (NCC) was established within the Ministry for Finance through Subsidiary Legislation S.L. 373.02, enacted on the 13th April 2018. The NCC is the governing body responsible for the general oversight of Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) policy. The NCC in 2018 led the exercise for the completion of thematic risk assessments, including for terrorism financing. This risk assessment was a national effort and incorporated data and expertise from relevant authorities and the private sector. For competent authorities, the risk assessment will help prioritise efforts and resources using a risk-based approach. For the private sector, it will allow for the development of proportionate and effective controls.

Risk assessments are necessary, and this is especially so in view of the fact that the FATF guidelines² recommend that it is important that countries assess and continue to monitor their FT risks regardless of the absence of known threats. In addition, the FATF guidelines stipulate that an assessment of FT risk should result in clear and practical follow-up actions. Such follow-up actions may include (but are not limited to): amendments in CFT legislation and policies to address identified deficiencies, allocation of resources or training to key authorities, development of platforms or mechanisms to enhance information sharing on FT, enhanced engagement with sectors or institutions identified as vulnerable to FT, and/or implementation of a more systemic mechanism for collecting and maintaining FT or terrorism related information. Experience to date highlights the importance of clearly allocating and codifying (if possible) which authorities are responsible for follow-up actions (including updating the risk assessment), as well as setting timelines.

The sectoral risk assessment on the financing of terrorism in Malta has been finalised and endorsed by the NCC board members in July 2019. This document represents the targeted action plan to mitigate the identified risks within this sectoral risk assessment. The NCC has consulted with all the relevant competent authorities for the finalization of this action plan, namely with the Financial Intelligence Analysis Unit (FIAU), the Malta Police Force (MPF); the Malta Security Services (MSS), the Customs Department; the Malta Financial Services Authority (MFSA); the Malta Gaming Authority (MGA); the Office of the Commissioner for

¹ The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard.

² FATF (2019), Terrorist Financing Risk Assessment Guidance, FATF, Paris, www.fatf-gafi.org/publications/methodsandtrends/documents/Terrorist-Financing-Risk-AssessmentGuidance.html

Voluntary Organisations (OCVO); the Sanctions Monitoring Board (SMB); the Asset Recovery Bureau (ARB) and the Office of the Attorney General (AGO).

Accordingly, prior to assessing the key findings from the FT risk assessment, a brief insight of the Maltese economy is presented in the next section. This overview will help in understanding better the inherent vulnerabilities that emanate from the FT risk assessment. How this risk assessment was conducted is briefly presented in the third section. Subsequently, the key findings of this risk assessment follow, while the final section will present the action plans aimed at mitigating such risks.

2. The Maltese Economy

The required scope of a FT risk assessment will vary between jurisdictions. However, in line with the FATF guidance (2019), this may be impacted by:

- (i) the unique national and regional FT threat profile,
- (ii) the importance and materiality of different sectors, and
- (iii) the jurisdiction's geographic location and demographics.

Accordingly, this section serves to assess the characteristics of the Maltese economy in order to highlight pertaining features of the Maltese economy.

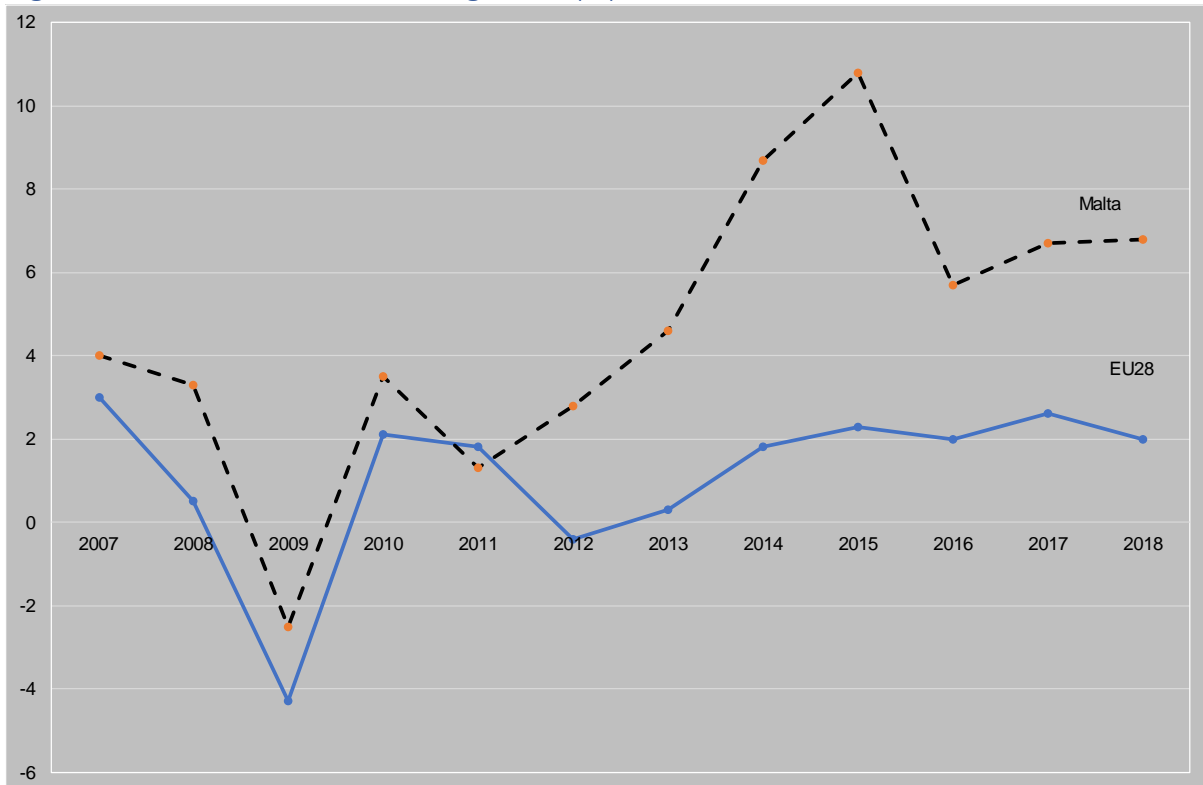
The Republic of Malta is a Southern European island country comprising an archipelago of three islands in the middle of the Mediterranean Sea. It lies 80 km south of Italy, 284 km east of Tunisia, and 333 km north of Libya. The country covers just over 316 km² with an estimated total population at the end of 2018 of 493,559, up by 3.8 per cent when compared to 2017, making it one of the world's smallest and most densely populated countries. The population increase in 2018 was largely due to a net migration of 17,102 persons, an increase of 17 per cent when compared to the previous year. Excluding adoptions, the largest share of migrants were third-country nationals at 9,209 followed by other EU nationals at 7,349, with a net migration of Maltese nationals estimated at 480.³

Economic growth in 2018 reached 6.6 per cent in real terms, more than double the 1.9 per cent average rate of growth recorded by the EU-28. Malta is one of the fastest growing economies in the EU with a compounded rate of growth of 4.5 per cent between 2007 and 2018. As shown in Figure 1, the rate of growth recorded in 2007 to 2018 compares remarkably well with the EU average growth rate of 1.1 per cent. As a result, Malta's GDP per capita has increased from €15,500 in 2007 to €20,100 in 2018.⁴

³ Source: National Statistics Office

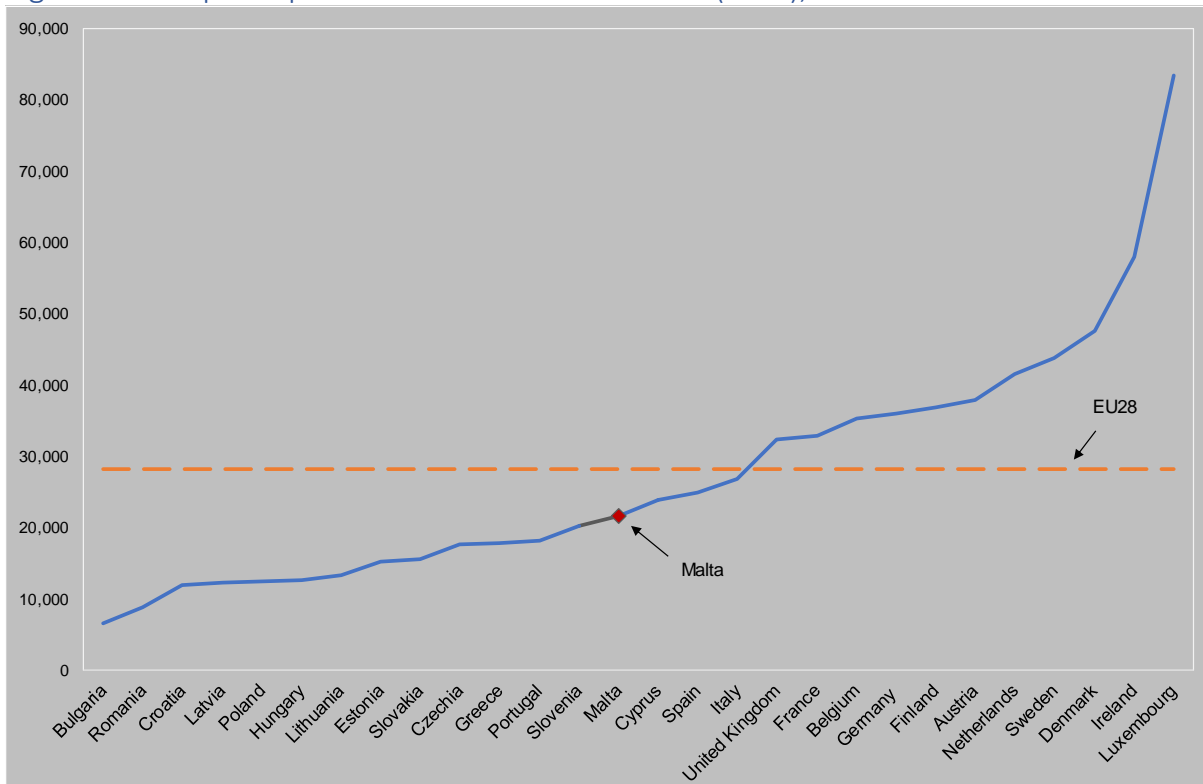
⁴ Source: EUROSTAT

Figure 1: Malta and EU Real GDP growth (%)



Source: Eurostat

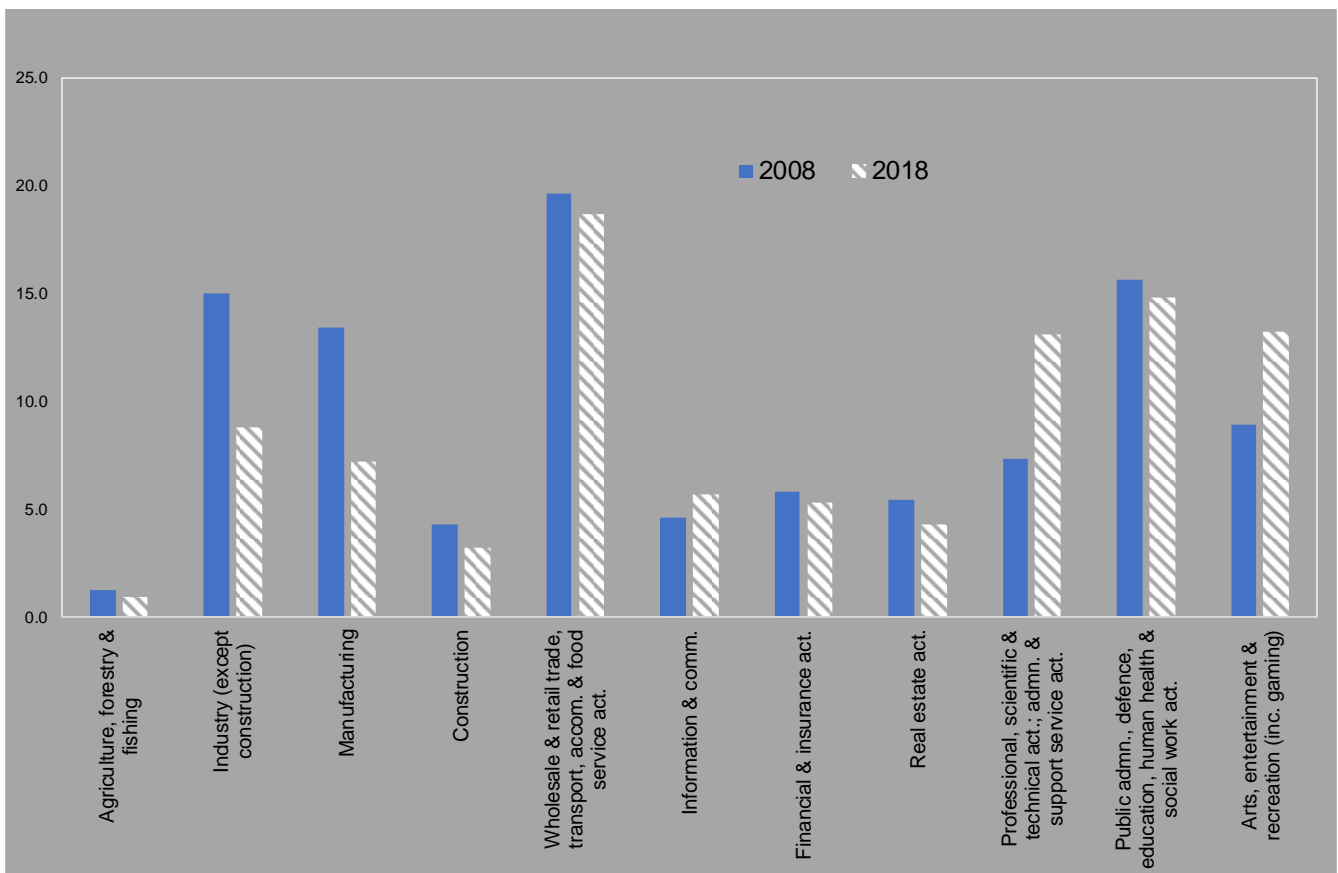
Figure 2: GDP per capita across EU Member States (Euro), 2018



Source: Eurostat

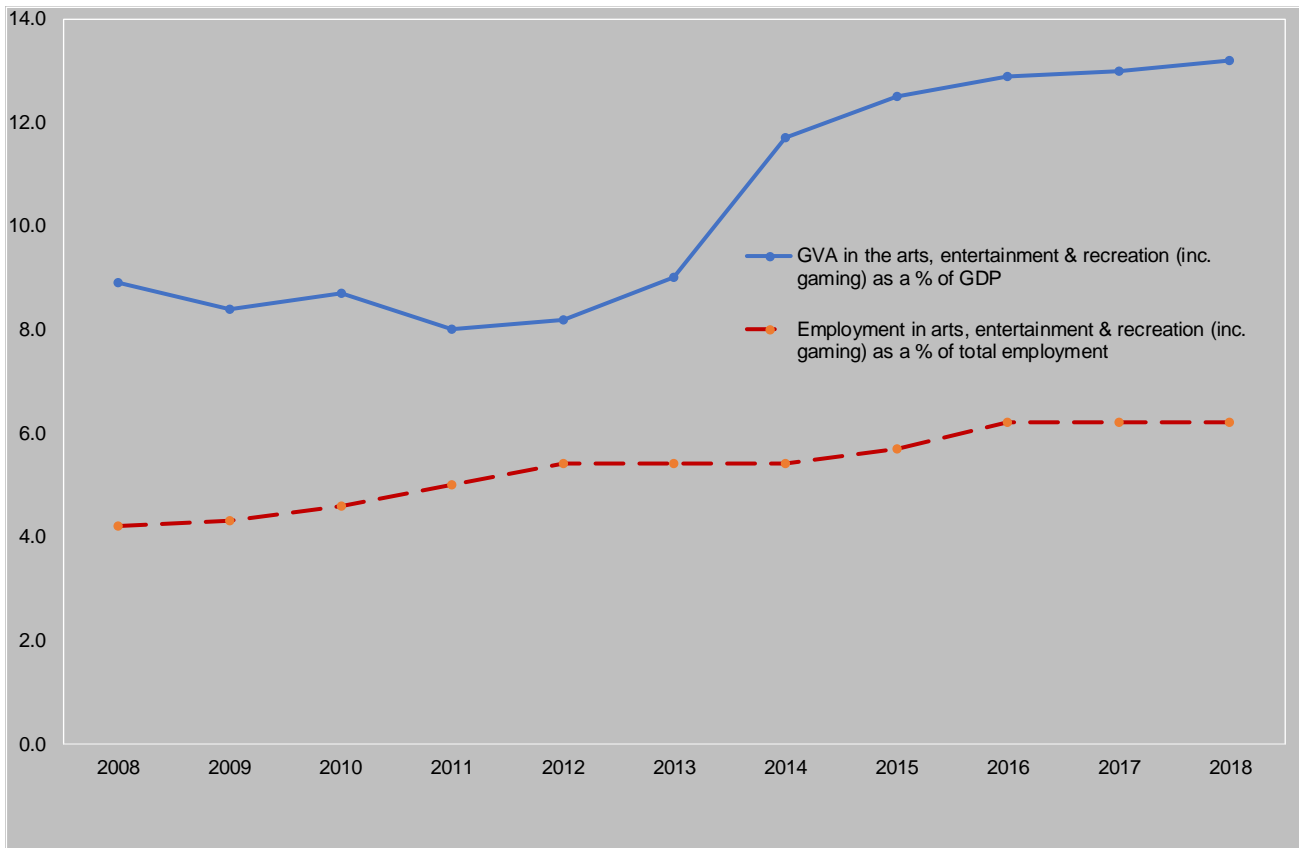
As shown in Figure 3, in the period from 2008 to 2018 in Malta there was a significant increase in the Gross Value Added as a percentage of the GDP originating from the professional sector that includes the legal and accounting professions and consultants as well as from the arts, entertainment and recreation sector that includes the gaming sector. Furthermore, Figure 4 shows the growth pattern in the GVA and in employment in this latter sector as from 2008 to 2018. As shown in Figure 4, the gross value added from the arts, entertainment and recreation sector as a percentage of GDP increased from 8.9 per cent in 2008 to 13.2 per cent, whilst the percentage of employment in this sector increased from 4.2 per cent to 6.2 per cent during this same time period.

Figure 3: Gross Value Added by sector as a % of GDP (%)



Source: Eurostat

Figure 4: Breakdown of GDP and labour force in the arts, entertainment & recreation sector including gaming (%)



Source: Eurostat

As indicated by statistics, since the global recession, Malta has been registering positive economic performance that in some instances is much better than other Euro area member states. This is somewhat contradictory given the structural characteristic of the degree of openness of a small economy facing a hostile external environment. However, this could partly be explained by the pronounced structural changes that occurred in the Maltese economy in the years preceding the crisis, which appear to have led to significant divergences from past macroeconomic behaviour. Growth in the services sector in Malta recorded significant increases and this as a result of the liberalisation measures, the higher availability of better educated labour resources and a targeted strategy to attract foreign direct investment. Besides the traditional areas of tourism, education, health, retailing and banking activities, the services industry expanded to include higher value-added activities generated by the financial services sector, specialised forms of tourism – like language schools and dive centres – maritime activity, professional services, back-office administration, information technology and gaming.

3. Overview of the Risk Assessment

According to the FATF guidelines (2019) countries often face particular challenges in assessing FT risks due to the low value of funds or other assets used in many instances, and the wide variety of sectors misused for the purpose of financing terrorism. FT shares many of the characteristics of ML, however, the factors associated with FT risk are distinct from those associated with ML risk. While laundered funds come from the proceeds of illegal activities,

funds used to finance terrorism may come from both legitimate and illegitimate sources. Similarly, for ML it is often the case that the generation of funds may be an end in itself with the purpose of laundering being to transmit the funds to a legitimate enterprise. In the case of FT, the end is to support acts of terrorism, terrorist individuals and organisations, and for that reason the funds or other assets must, for the most part, ultimately be transferred to persons connected with terrorism. Another important distinction is that while identification of ML risk is often enforcement-led, FT risk by the nature of the threat will need to be more intelligence led.

A FT risk can be identified as being a function of three factors, that is, that of threat, vulnerability and consequence. FATF guidelines point out that it involves the risk that funds or other assets intended for a terrorist⁵ or terrorist organisation⁶ are being raised, moved, stored or used in or through a jurisdiction, in the form of legitimate or illegitimate funds or other assets. According to the FATF guidelines, a FT threat is a person or group of people with the potential to cause harm by raising, moving, storing or using funds and other assets (whether from legitimate or illegitimate sources) for terrorist purposes. FT threats may include domestic or international terrorist organisations and their facilitators, their funds, as well as past, present and future FT activities, and individuals and populations sympathetic to terrorist organisations. Alternatively, the concept of FT vulnerability includes those things that can be exploited by the threat or that may support or facilitate its activities. Meanwhile, vulnerabilities may include features of a particular sector, a financial product or type of service that makes them attractive for FT. Vulnerabilities may also include weaknesses in measures designed specifically for CFT, or more broadly in AML/CFT systems or controls, or contextual features of a jurisdiction that may impact opportunities for terrorist financiers to raise or move funds or other assets. In addition, there may be some overlap in the vulnerabilities exploited for both ML and FT.

Furthermore, in the FT context, consequence refers to the impact or harm that a FT threat may cause if eventuated. This includes the effect of the underlying terrorist activity on domestic or institutional financial systems and institutions, as well as the economy and society more generally. Notably, consequences for FT are likely to be more severe than for ML or other types of financial crime (e.g. tax fraud etc.), which impacts how countries respond to identified threats.

Therefore, FATF guidance (2019) indicate that a FT risk assessment is a product or process based on a methodology, agreed by those parties involved, that attempts to identify, analyse and understand FT risk and serves as a first step in addressing them. While assessments may take different forms, a FT risk assessment should generally cover all aspects of raising, moving, storing and using funds or other assets (including goods, vehicles, weapons etc.) to meet the needs of a terrorist or terrorist organisation. Malta's FT risk assessment uses a framework that

⁵ FATF (2019) stipulates that the term terrorist refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

⁶ FATF (2019) stipulates also that the term terrorist organisation refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act

has been developed based on the Monaco Guidance⁷, the latest FATF standards on CFT, and other international guidance (e.g. from the IMF).

The key concepts, taken from the FATF guidance (2019) on money-laundering and terrorist financing risk assessment, are risk, threat, vulnerability and consequence, whereby:

- The risk element is based on the following major components for assessing each relevant sector:
 - The likelihood of terrorist groups or organized criminal groups misusing products or services provided by a sector for illicit purposes (that is, level of threat).
 - The potential weaknesses of those same products or services that allow terrorist groups or organized criminal groups to misuse them for illicit purposes (that is, level of vulnerability).

- The weaknesses are assessed according to the following criteria:
 - Inherent risk exposure of the product or service due to its inherent characteristics (based on the product, geographical or customer risks)
 - Risk awareness of the sector and competent authorities that the products or services may be misused (organizational framework of the sector, availability of a risk assessment, level of suspicious transactions reporting)
 - Legal framework and controls in place (existing legal framework, current implementation of the controls and of the customer's due diligence requirements, level of cooperation with competent authorities)

The assessment of threats and vulnerabilities helps to define the residual risk. Residual risk is the risk remaining once the safeguards against the financing of terrorism have mitigated the threats. Based on the FATF guidance on the FT risk assessment, the approach adopted to assess the inherent vulnerability is that:

- If an activity or sector is globally known to be used for FT, and a material volume is known to occur within a jurisdiction, it will be considered to be high vulnerability unless significant evidence to the contrary can be provided;
- Lack of identified/proved FT in an activity or sector is not accepted evidence due to the known challenges all jurisdictions face in identifying FT and the international immaturity of CFT measures.

- A consequence is the impact or harm that money-laundering or terrorist financing may cause and includes the effect of the underlying criminal and terrorist activity on financial systems and institutions, as well as the economy and society more generally. The consequences of money-laundering or terrorist financing may be short- or long-term in nature and also relate to populations, specific communities, the business environment, or national or international interests, as well as the reputation and attractiveness of a country's financial sector.

According to the FATF guidance (2019), once jurisdictions have identified known and potential FT threats and vulnerabilities, the next step is to consider how these interact to form risks. The level of the country-inherent risk is calculated by combining an assessment of the level of threats taking into account the weaknesses of the financial system and the economy. The inherent risk exposure which reflects the risk exposure before the mitigating measures are put in place, is assessed through the following:

⁷ Monaco Workshop of Financial Centres, *Guidance on identifying, assessing and understanding the risk of terrorist financing in financial centres*, 2018

- Product: speed and anonymity of transactions, delivery channels, volume of transactions, cash involvement, management of new technologies and payment methods;
- Customer: high-risk customers, management of beneficial owner risks;
- Geographical risk: high-risk areas, size of cross-border transactions.

However, it is to be noted that neither threat nor inherent vulnerability are a judgement on the capability of a jurisdiction to fight FT. Both must take into account external factors (such as geography) which are not within the control of any jurisdiction; but are relevant for understanding context and must be considered when assessing the appropriate level of controls required. Accordingly, the next section will proceed in highlighting the outcomes of this risk assessment.

4. Salient Points

The FATF guidance (2019) indicates that jurisdictions bordering a conflict zone or within close proximity to jurisdictions with active terrorist organisations often face additional cross-border FT threats. Furthermore, several FATF reports have identified use of cash as a common means through which terrorist financiers raise, move and use funds. Lower capacity jurisdictions with a large cash-based economies and informal/unregulated activities can therefore face additional FT vulnerabilities. Accordingly, Malta's FT risk assessment takes into account the significant use of cash in its economy.

The risk assessment primarily considers the types of actors that pose a terrorism and FT threat to Malta. Terrorism and FT threats are distinct; however, they are often interlinked. An understanding of the general terrorism environment and how it drives, and influences FT activity is therefore important in any FT risk assessment.⁸ Similar to any other country, Malta faces threats from several different types of actor. These were identified as:

- small terrorist cells and lone actors - Individuals or small groups who typically rely on modest resources to carry out relatively low-tech attacks, for example, foreign terrorist fighters; small terrorist cells; and individual actors.
- command and control terrorist networks - organisations that seek to operate over an extended period of time, coordinating members' activities across the world;
- terrorist organisations which control significant territory - organisations that control territory or conduct military-like operations, and have organisational structures that more closely resemble that of armies and governments than terrorist cells;
- foreign safe havens and state sponsors of terrorism - nation states that 'repeatedly provide support for acts of international terrorism', or 'provide a safe haven for terrorist groups' (as defined by the US State Department List), for example, Syria, Iran, Sudan, Democratic People's Republic of Korea (DPRK), Libya, Iraq, Lebanon, Egypt; and
- 'corporate' terrorist groups - organisations that sit in the increasingly overlapping arena of terrorism and organised crime, for example, narco-terrorists, modern pirates.

Accordingly, the risk assessment next considers Malta's inherent vulnerabilities across the end-to-end FT process (raising, movement, and use of funds). In assessing this process, the analysis focuses exclusively on Malta's exposure to FT and does not consider the effectiveness of controls. These vulnerabilities primarily relate to where the country's infrastructure (e.g. the

⁸ FATF Risk Trends and Methods Group, *Draft terrorist financing risk assessment guidance*, 2019

Malta Freeport) or organisations (e.g. those in the financial services sector) could be used as a transit destination in the financing of terrorist activities overseas.

Raising funds

Research indicates that terrorist actors raise funds from a range of sources, including both legitimate and illegitimate activities. In Malta, prior to any consideration of the controls that are in place, FT vulnerabilities relate primarily to the potential for the country's infrastructure (i.e. the Malta Freeport) to be used as a transit destination in illicit activities originating overseas. When assessing illegitimate sources of funds, the focus was on funds intended for terrorist activities that are raised through activities that are in themselves illicit (i.e. generated through predicate offences), such as smuggling, drug trafficking, fraud and misappropriation, and local and foreign criminal groups. Meanwhile, legitimate sources of funds refer to funds intended for terrorist activities that are raised through activities that are not in themselves illicit, for example, fundraising through voluntary organisations, funding through legitimate business activities, self-funding, and direct contributions by groups or private donors.

Movement of funds

The movement of funds assessment considers potential channels in Malta which may be misused and/or abused to move terrorist funds. Terrorist actors use a range of channels to move funds within and across borders. Reflecting the Monaco Guidance⁹, these channels have been broken down into three categories:

- **Flow-through:** relating to instances when the financial centre is used as a transit country for funds (or other stores of value) intended for use in foreign terrorism, for example, credit institutions, financial institutions, e-money institutions and other value transfer mechanisms, couriers and other cash transfer mechanisms, new and emerging payment technologies, other financial service providers, and legal entities and arrangements.
- **Service providers:** relating to instances when businesses in the financial centre provide admin/other services to parties supporting terrorism, for example, DNFBPs (excluding gaming) and gaming.
- **Abuse of philanthropic organisations:** relating to instances when donations/aid sent to, or administered by, financial centres are diverted to support foreign terrorism, for example the voluntary organisations.

Like many other financial centres, there are several channels in Malta that are particularly exposed to FT. The nature of these exposures typically relates to facilitating cross-border movement of funds intended for use overseas. The primary drivers of this are the vulnerabilities associated with credit institutions; payment institutions, e-money institutions and other value transfer mechanisms; couriers and other cash transfer mechanisms; voluntary organisations, and the new and emerging payment technologies (such as virtual currencies).

Use of funds

Any terrorist funds that are raised in Malta, or moved through Malta, could be used for a variety of different purposes and in numerous different locations. It is very difficult to ascertain specific uses of funds and therefore this part of the assessment considered more broadly

⁹ Monaco Workshop of Financial Centres, *Guidance on identifying, assessing and understanding the risk of terrorist financing in financial centres*, 2018

whether any funds that may be raised in/moved through Malta would be more likely to be used domestically or internationally. As an international financial centre the possibility of facilitating international use of funds is more significant. This is primarily due to the high-level of cross-border transactions facilitated by Malta, and the significant level of financial flows to countries where terrorist activity is taking place.

Effectiveness of controls

The risk assessment then considers the effectiveness of Malta's controls to combat FT from the point of view of prevention (excluding law enforcement);¹⁰ supervision; intelligence, investigation, prosecution, and asset recovery.

With regards to prevention, the assessment describes the controls implemented by public and private sector stakeholders to prevent terrorist funds from being raised, moved or used. These controls include the actions taken by the following main stakeholders: Customs, SMB, MIIPA, MBR and the Private Sector. These stakeholders implement a range of controls to prevent FT, notably including Malta's cross-border cash declaration regime; legal obligations to adhere to UN and EU financial sanctions; a four-tier due diligence process for any person applying for citizenship through the IIP; and numerous preventative measures by private sector organisations (e.g. customer due diligence). In this assessment, the following areas have been identified as priorities for improvement:

- (1) improve operational arrangements and legislative framework for cross-border cash control regime;
- (2) address challenges in verification processes for ultimate beneficial ownership information;
- (3) improve understanding of FT risks and knowledge of CFT and TFS obligations among the private sector;
- (4) improve use of advanced analytics for ongoing monitoring by the private sector (which contributes to relatively low numbers of FT STRs); and
- (5) address inconsistencies in the robustness of CDD processes across the private sector.

With regards to the assessment on supervision this includes the actions of four main stakeholders: FIAU, MFSA, MGA, OCVO. These stakeholders conduct CFT supervision through measures including market entry controls; ongoing monitoring of compliance with CFT obligations; the imposition of supervisory sanctions for non-compliance; and training and outreach to improve subject persons' understanding of FT risks and CFT obligations. Since the development of Malta's National AML/CFT Strategy, significant work has been undertaken to strengthen these controls, including increasing resources and developing new risk rating tools and processes. However, the following areas have been identified as priorities for improvement:

- (1) address inconsistencies in understanding of FT risks among supervisors;
- (2) improve process for using ML/FT risk ratings to inform the nature and frequency of supervisory activity (requirement to build on recent strengthening activities);
- (3) improve market entry controls and ongoing risk-based supervision of certain DNFBPs (e.g. real estate);
- (4) more FT-specific outreach and guidance required;
- (5) increase focus on CFT and build shared learnings between AML/CFT and prudential supervision; and
- (6) increase number of resources dedicated to AML/CFT supervision.

¹⁰ Note, this grouping excludes controls implemented by law enforcement authorities and the use of financial intelligence – these are considered under "Intelligence, investigation, prosecution and asset recovery"

With regards to the intelligence, investigation, prosecution and asset recovery this includes primarily the actions of six main stakeholders: FIAU, AMLU, CTU, MSS, AGO and ARB. These actions include the analysis and dissemination of financial intelligence; the use of such financial information and additional counter-terrorism intelligence to investigate FT cases; and the prosecution of these cases. This risk assessment has highlighted four areas that need further improvements:

- (1) potential to increase severity of legal framework for FT-related criminal sanctions;
- (2) development of CFT National Strategy required;
- (3) expand financial intelligence available; and
- (4) build experience in asset recovery.

The emerging outcome here is that while the authorities built the foundations of robust and effective CFT controls over the past years, the effectiveness of Malta's CFT end-to-end process needs to be further strengthened.

Areas that need to be addressed

The sectoral risk assessment on FT concludes that basically there are eight areas that need to be addressed in the action plan. These basically are to:

- **Further develop and formalise the strategic approach to CFT at a national level**, through completing the National Counter Terrorism Strategy (and ensuring CFT is integrated within it); and by formalising inter-agency CFT coordination mechanisms;
- **Review the legal framework** around terrorism and FT, specifically considering whether sanctions for FT offences are sufficiently dissuasive;
- **Enhance understanding of FT risks and knowledge of CFT obligations and TFS obligations** through increased outreach to the private sector and VOs; reviewing options to establish a Public Private Partnership on AML/CFT; and further FT-related training for relevant public bodies;
- **Accelerate efforts to strengthen the AML/CFT supervisory framework** by investing in resources; continuing to strengthen links between prudential and AML/CFT supervision; embedding CFT in ongoing monitoring; strengthening the supervisory framework for certain DNFBPs; and continuing to develop the supervisory approach for VOs;
- **Review and strengthen the end-to-end process from analysis of FT intelligence to investigation of FT cases** by enhancing FIAU's access to relevant information; developing the tools and personnel to analyse this information; reviewing allocation of responsibilities and internal capabilities for FT investigation within the Police; and improving the effectiveness of cooperation between the Police and other authorities;
- **Accelerate efforts to strengthen the cross-border cash regime** through legislative changes that empower the Customs Department, as well as investment to enhance processes, tools, and personnel;
- **Continue to enhance processes and capabilities to verify beneficial ownership** by adopting and implementing the recommendations of Malta's Risk Assessment and Strategy for Legal Entities, Arrangements, and Voluntary Organisations

- **Accelerate efforts to establish an effective asset recovery unit** by implementing the relevant recommendations of Malta’s National AML/CFT Strategy.

These thematic initiatives cut across the categories of controls of prevention, supervision, intelligence, investigation, prosecution and asset recovery. The initiatives also call for different parts of the control framework to be enhanced. These parts of the control framework include:

- strategy, organisation and governance
- legal and regulatory framework
- capabilities and processes and
- data, systems and tools.

Accordingly, the next section will review the actions that are aimed at mitigating the aforementioned risks. Consultations with the competent authorities were carried out in order to be able to have a holistic overview of the actions that will be implemented.

5. Planned Actions Aimed at Mitigating FT Risks

In order to introduce actions aimed at addressing the risks emerging from the FT risk assessment, consultations were carried out with the following competent authorities under the coordination of the NCC:

- Customs Department – responsible for ensuring the security of Malta’s borders, in particular against FT relating to the cross-border movement of cash, and the raising of funds through illicit activities such as smuggling and drug trafficking;
- Sanctions Monitoring Board (SMB) – responsible for ensuring the effective implementation of targeted financial sanctions relating to the financing of terrorism and proliferation financing;
- Financial Intelligence Analysis Unit (FIAU) – is responsible for the AML/CFT supervision of all financial services firms and DNFBPs. The FIAU also acts as the national FIU;
- Malta Financial Services Authority (MFSA) – responsible for the prudential and conduct supervision of financial services firms and TCSPs and collaborate closely with FIAU on the AML/CFT supervision of these entities;
- Malta Gaming Authority (MGA) – responsible for the prudential and conduct supervision of gaming companies’ licensees and collaborates closely with FIAU on the AML/CFT supervision of these entities;
- Office for the Commissioner of the Voluntary Organisations (OCVO) – responsible for the AML/CFT supervision of VOs;
- Counter-Terrorism Unit of the Malta Police Force (CTU) – responsible for the collection, analysis and dissemination of intelligence related to terrorism, extremism, radicalization and ancillary matters, and investigation of related cases;
- Ministry for Home Affairs and National Security (MHAS) – responsible for protecting national security, primarily through intelligence gathering;
- Attorney General (AG) – responsible for prosecution of FT cases that reach the Criminal Court;
- Asset Recovery Bureau (ARB) – responsible for the identification, tracing, freezing, confiscation and recovery of criminal assets (including those related to FT).

The competent authorities are all committed to preventing, detecting and prosecuting money laundering and terrorist financing activities, and all agree that financial crime threatens the

safety of our society, the integrity of our financial system, and the stability of our economy. To this end, all the authorities agreed that there must be a clear strategic direction at the national level entwined with a close cooperation among relevant stakeholders and that there should be increased communication throughout. In line with this objective, a working platform between the AG's Office, FIAU, Police, Customs and the MHAS is being planned so that FT risks and cases will be discussed, and the details of investigations exchanged within a legal framework. This will require additional changes to PMLA and/or PMLFTR from the FIAU since presently the FIAU does not have the legal basis to exchange case-specific information with the AG's office and MHAS. Furthermore, there is also the proposal of considering setting up a 'one-stop shop' (including the FIAU, Police, MHAS, CfR, Customs, ARB and SMB) through which there could be the access of databases as well as the possibility of sharing and exchanging information in a more spontaneous, effective and efficient manner.

In order to enhance further this objective, a counter terrorism and financing for terrorism sub-committee is currently being set up under the auspices of the NCC. The objective of this sub-committee will be that of addressing the risks identified by the risk assessment, setting up a new way forward that takes into consideration the capabilities and address the necessary sharing of information. This sub-committee will help in increasing the coordination and cooperation amongst the competent authorities. In addition, in order to ensure the necessary effective ongoing cooperation and intelligence sharing among the stakeholders, workshops will be organized involving all the authorities.

Furthermore, as a general note, in order to address the instances where the risk assessment on FT indicates that there is a lacuna of statistics, the NCC is currently working on observing and maintaining the latest knowledge of ML/FT developments in Malta to ensure adequate monitoring of the progress achieved with regards to the investigating and prosecuting of ML/FT.

The following sections present specific action plans aimed at the control categories of prevention, supervision, and intelligence, investigation, prosecution and asset recovery.

Prevention

This section refers to the actions that authorities are planning to implement in order to address the risks indicated in the risk assessment. In the risk assessment it was concluded that Malta in order to mitigate FT risks needs to:

- Improve operational arrangements and legislative framework for cross-border cash control regime;
- Address challenges in the verification processes for ultimate beneficial ownership information;
- Improve understanding of FT risks and knowledge of CFT and targeted financial sanctions obligations among the private sector;
- Improve use of advanced analytics for ongoing monitoring by the private sector;
- Address inconsistencies in the robustness of the CDD processes across the private sector.

Primarily the Customs Department is responsible for ensuring the security of the Maltese borders. Its remit encompasses a range of responsibilities and it takes CFT measures across all stages of the end-to-end FT process. The primary control used to prevent movement of terrorist funds is the cash declaration regime. Malta requires any persons entering/leaving/transiting the country (irrespective of whether they arrive from/depart to the EU or a third country) to declare

cash they carry in excess of €10,000.¹¹ The risk assessment identified that with regards to the Customs responsibilities in Malta, this department should accelerate efforts to strengthen the cross-border cash regime through legislative changes that empower it, as well as investment to enhance processes, tools and personnel.

In order to address this recommendation, the Customs Department is currently following the newly established EU's Cash Controls Committee. In order to strengthen this mechanism, the Department is working on implementing the procedures of the new Cash Controls Regulation¹². The Regulation seeks to empower the competent authorities to temporarily detain cash whenever there are indications that the cash, irrespective of the amount, is related to criminal activity. According to the EU Regulation, the detention period shall not exceed 30 days. This will give Customs ample time to analyze and investigate together with its counterparts (that is, the MPF, the MHAS and the FIAU). In addition to this, it is to be noted that the Customs Department are implementing a new system through which all declarations are made available in real time to the MPF, the MHAS and the FIAU. This system thus allows the sharing of information about undeclared cash and other monetary instruments and information about suspect persons.

Furthermore, in order to enhance further its preventive powers, Customs Department in Malta, together with the NCC, have indicated that the next step will be addressing the issue that Customs do not have the legal power to hold on to the confiscations made. Currently, the law does not presently provide a mechanism whereby Customs officials may immediately themselves confiscate or seize money upon suspicion. However, presently the law allows for a mechanism that if the Customs officials have suspicion, the police are immediately alerted to take action, which also includes the possibility to ask for an attachment order to the AG, who will in turn make a request before the Criminal Court in terms of law. What the Customs Department does not have presently is the legal power to detain monies declared even if such monies are suspected to be proceeds of crime. Therefore, this will necessitate an amendment in the law and is a key issue to be addressed in the imminent future.

Furthermore, in order to conduct regular outreach in order to enhance the awareness and understanding of the subject persons of FT-related TFS obligations, including actions to be taken under the freezing mechanisms, the SMB reported that this is being tackled to target various subject persons groups such as notaries, lawyers, gaming companies, financial institutions, shipping companies, insurance companies, and others. The SMB is the competent body responsible for all matters related to UN or EU sanctions. It assumes the responsibility of ensuring the effective implementation of targeted financial sanction relating to both financing of terrorism and proliferation financing.

Supervision

According to the sectoral risk assessment on FT, strong supervision is necessary to ensure that CFT controls are implemented effectively by the private sector and that appropriate sanctions are imposed when necessary. In its findings, this risk assessment concluded that Malta is already taking a number of actions to strengthen its supervisory framework, however these should be accelerated. In particular, it was recommended for the authorities to:

¹¹ Subsidiary legislation 233.07 – Cash Controls Regulations, 2007, <https://customs.gov.mt/docs/default-source/travellers/233-07.pdf?sfvrsn=2>

¹² EU Regulation (EU) 2018/1672 Art. 7

- Complete the hiring of additional supervisory resources at the FIAU, MFSA, and OCVO within the timelines agreed as part of the National AML/CFT Strategy and thematic Risk Assessments and review the appropriateness of resource levels periodically.
- Complete current work at the FIAU to further develop the entity-specific risk-rating process and ensure that these ratings inform the intensity of supervision. This should include finalising the development of the Compliance and Supervision Platform for Assessing Risk (CASPAR) risk-rating tool and risk algorithm and ensuring that all relevant data inputs feed into the tool (e.g. findings of prudential supervision, findings of AML/CFT supervision; relevant public sources). The risk rating process should then be used to inform the intensity and prioritisation of supervision, for example as part of the FIAU's 'supervisory cycle';
- Continue to strengthen links between prudential and AML/CFT supervision, in particular with regards to the exchange of information between MFSA and FIAU.
- Enhance ongoing monitoring activities carried out by FIAU, MFSA and MGA and embed CFT as a key tenant within them. This should include enhancing the process for onsite inspections and increasing the focus on assessing the effectiveness of transaction monitoring systems. It could also include the addition of specific CFT considerations to supervisory checklists and questioning the understanding of FT typologies and CFT obligations as part of interviews with key stakeholders. A closer cooperation with the SMB is asked for with regards to further embedding supervision related to TFS;
- Issue guidance to all sectors on FT;
- Review market entry controls and ongoing supervision of certain DNFBPs (legal professionals, accountants, dealers in precious metals (DPMs), real estate agents) and consider how controls can be enhanced and/or introduced (as relevant).
- Continue to develop AML/CFT supervision of VOs, including maintaining an up-to-date risk assessment and using this to inform the intensity and nature of onsite inspections and offsite reviews.

In line with these recommendations, the FIAU primarily stressed that by January 2020, its Compliance Section through CASPAR will have the following implemented:

- a) Include a module where to record breaches identified during examination, that assist in identifying the main ML/FT shortcomings by SPs;
- b) Implement a reporting tool to collect data on main ML/FT risks as stated by SPs themselves in the risk evaluation questionnaire.

Furthermore, the FIAU is continuously contributing in the sectoral risk assessment on FT. The FIAU is currently working on identifying emerging FT trends and typologies and compiling an internal report which will be ready by November 2019. Subsequently, FIAU aims at conducting a consultation session with representatives of the private sector and with external experts in order to consult on the emerging trends noticed, and thereafter update its 'Guidance Note on Funding of Terrorism – Red Flags and Suspicious Activities' by June 2020. Additionally, a thematic review is to be carried out on financial institutions carrying out money remittance activities which will assist in identifying FT risks by June 2020. Such FT risks are to be considered particularly in the conduct of supervision on credit institutions and financial institutions that provide money remittance services. Thereafter, FIAU will concentrate on carrying out a strategic analysis of at-risk VOs and thus publish a typologies report. Along this action, FIAU will also be conducting again an exercise that has been done since 2009, a Customs Exercise on cash declarations made in 2018, and thus it will be able to finalise and share report with other competent authorities by May 2020. Besides, FIAU is aiming at carrying out a strategic analysis on data from money remitters to identify FT risks, trends or typologies, with the conclusion of strategic analysis to be completed by April 2020.

Additionally, in order to address the recruitment aspect, it is to be noted that for the FIAU:

- a four-year recruitment plan for the Compliance Section has been compiled, with a plan to increase resources to over 58 employees by the end of 2021. Section has been split into four teams as follows,
 - Risk and Enforcement;
 - three Sectorial Teams.

This allows more coverage of supervision on all sectors from risk assessment stage till follow-up stage and better sectorial expertise. Recruitment interviews are being held on an ongoing basis.

- in the short-term until permanent staff is recruited, additional resources will be sought through outsourcing agreements.
- The frequency and depth of AML/CFT supervisory examinations that SPs will be subject to shall be commensurate with the entity-specific ML/FT risk assessment result as determined through the FIAU's revised Risk Assessment Scoring Methodology and Risk Assessment Framework, with high risk SPs subject to compliance examination on an 18-month cycle, medium risk SPs through compliance on a four year cycle and low risk SPs through KRI analytics. Strategy has already been compiled and will start its implementation as from July 2019.
- training needs assessment carried out in March 2019, however, the results of these will be implemented during the course of the year and training delivered to all staff across all teams. Training attended will be recorded.

With regards to the recommendation aimed at raising awareness of all FIs and DNFBPs of the ML/FT risks in Malta, the FIAU is also committed to the:

- issuance of sector specific guidance for banks and FIs, which will include guidance on risks and mitigating measures by March 2020;
- issuance of sector specific guidance for CSPs, which will include guidance on risks and mitigating measures by February 2020;
- hold consultation meetings in conjunction with launch of sector specific banks' & FIs IPs and sector specific IPs for CSPs by March 2020;
- training session upon the launch of the sector specific procedures for CSPs by March 2020;
- issue of Guidance Paper on Risks for Property Sector (i.e. Notaries and Real Estate Agents by February 2020);
- training session to property sector upon issuance of Guidance Paper on risks by June 2020;
- lawyers' Sector Specific Guidance which will include guidance on risks by June 2020.

In addition, with regards to the recommendation highlighting that there should be close cooperation with the SMB on further embedding supervision related to TFS, it is to be noted that as part of its supervisory procedures, checks on TFS are carried out by compliance officers during examinations. An MoU between the SMB, FIAU, MFSA and MGA has been signed in order for the former to be informed on findings related to TFS. FIAU/MFSA/MGA are now informing SMB of such findings on a regular basis. An exercise is currently being carried out to collectively report these findings for reports issued pre the initiation of the July 2019 cycle, while going forward compliance officers shall notify the SMB on a case by case basis.

Moreover, as from July 2019, supervision approach applied on SPs has been enhanced to ascertain that a risk-based approach is applied. In fact, through the CASPAR system, each SP is risk assessed taking into consideration a number of risk criteria including risks emanating from the SP's specific operations, information from other supervisory authorities, information

from the Malta FIU, information available at the FIAU's Compliance Section risks emerging from the NRA and Supra-National Risk Assessment and adverse and other information that becomes available at the FIAU. Based on the overall risk classification, the method and frequency of supervision to be carried out by the FIAU (or MFSA/MGA on behalf of the FIAU) will be determined. The FIAU's risk assessment methodology is also ongoing, and therefore the supervisory plan is revised each time new and material information becomes available.

Furthermore, the MGA and FIAU have published detailed information on ML/FT risks, trends and typologies in the Implementing Procedures part 2 for the remote gaming sector, which covers risk levels on Funding Methods, Game Types and Channels. In addition, jointly with the FIAU, the MGA is in the process of revising the sector specific procedures for the Remote Gaming Sector. By mid-2020, the MGA jointly with the FIAU will be revising the sector specific procedures for the land-based casinos, as well as providing a training session aimed at the sector in line with the new updates of the Sector Specific Implementing Procedures.

Furthermore, there is also the OCVO with the recommended priority area for improvement being that of developing further the supervisory approach for the VOs. To this end, the OCVO will have embarked on an outreach awareness programme for the whole sector by the end of 2019. In fact, this Office is vigilant on the non-enrolled VOs through close monitoring of the social media. The Office is also preparing a list of the risks which these non-enrolled VOs present to the sector. With regards to public collections regulation, drafting of the legislation has reached an advance stage and is being reviewed. The permit for public collections is mandatory for individual fundraisers presently issued by the police. The fact that enrolment of VOs is mandatory makes applying to the police for a license irrelevant. The OCVO will continue to work in order to have an adequate number of staff as well as premises in order to cater for the present as well as the new responsibilities. In fact, by the first quarter of 2020, the OCVO is planning to recruit Field Investigation Officers to carry out onsite investigations.

MFSA has also taken the initiative of circulating on an annual basis 'Prudential Questionnaires' which are featuring into Pillar 2 of their specific Risk Assessment. The MFSA (AML Team) is also currently conducting internal training to all other Units within MFSA which amongst others are tackling inconsistencies in understanding AML and FT risks. When it comes to resources the MFSA is also making huge efforts to increase capacity and number of resources specifically dedicated to AML/CFT supervision.

Intelligence, Investigation and Prosecution

The risk assessment recommended that authorities that fall under the category of intelligence, investigation and prosecution (the FIAU, CTU, MSS, AG, ARB) should:

- review the legal framework around terrorism and FT, specifically considering whether sanctions for FT offences are sufficiently dissuasive;
- further develop and formalize the strategic approach to CFT at a national level;
- review and strengthen the end-to-end process from analysis of FT intelligence to investigation of FT cases by enhancing FIAU's access to relevant information; developing the tools and personnel to analyse this information; reviewing allocation of responsibilities and internal capabilities for FT investigation within the Police; and improving the effectiveness of cooperation between the Police and other authorities;
- accelerate efforts to establish an effective asset recovery unit by implementing the relevant recommendations of Malta's National AML/CFT strategy.

The competent authorities are aware of the fact that the level of FT sanctions, in particular with regards to the financing of individual terrorists or specific terrorist acts (currently punishable by a maximum sentence of only four years imprisonment) should be further raised to a fully-dissuasive level. In fact, by the first quarter of 2020, the AG should prepare the necessary amendments to the law such as to increase punishment for FT to increase dissuasiveness.

With regards to the sharing of information, the CTU emphasized that a way of mitigating the risks is having a shared database across the board. This sharing of intelligence and information will lead to greater efficiency. The ARB agreed on this and emphasized that the exchange of information is vital, and that capacity building is an important issue.

Furthermore, by the second quarter of 2020, the ARB shall develop standard operating procedures that will provide guidance to staff operating on asset tracing, asset management and disposal of confiscated assets. The topics to be covered are the following:

- The identification and tracing of assets, directly or indirectly related to the investigated person and compilation of the Asset Inventory.
- Instituting cross-border cooperation and assisting in the drafting of European Investigation Orders.
- Instituting proceedings to take in possession from any competent authority and assist in the enforcement of confiscation orders and securing assets for disposal in favour of the Government.
- The handling and administration of confiscated assets and preparation for sale by auction.
- The collection of comprehensive statistics from cases and relevant authorities.

In order to address the recommendation of becoming fully operational and develop an efficient tool for the tracing and management of assets, supported by sufficient resources and training for the authorities involved, the ARB shall by the second quarter of 2020:

- conduct a revised human resources plan.
- re-negotiation of the wages as well as the grades and structure for staff working at ARB.
- investing in asset tracing technology
- enabling staff to participate in specialised training set locally or abroad and inviting experts from abroad to deliver training in Malta.
- screening of existing legislation as a means to strengthen the ARB position on asset recovery.
- additional office space.

6. Concluding Remarks

NCC as the governing body responsible for the general oversight of AML/CFT policy, will continue to work hard to ensure that sectoral risk assessments are continuously carried out. Given the nature of terrorism and FT offences and lack of terrorist activity to date in Malta ultimately means that data may be limited. However, the NCC will continue to research for information from numerous public sources including international bodies and research providers and provide data for case studies. In addition, qualitative insights from key stakeholders will always be sought in order to refine the conclusions further. Information is key and the NCC will continue in addressing the fact that there is a comprehensive, coordinated and communicated national strategy on FT and that there is an effective execution, as well as

effective ongoing cooperation and intelligence sharing among stakeholders, especially in light of the fact that risks are not static but are of a dynamic nature.